

ETHICS ADVISORY PANEL
OPINION # 95-8, REQUEST # 566
Issued February 9, 1995

The inquiring attorney was retained by beneficiaries of an estate to investigate the actions of the Administrator of the estate in the sale of estate assets. The inquiring attorney discovered several irregularities regarding the sale and filed a petition with the probate court seeking the Administrator's explanation of the irregularities.

Soon, thereafter, the inquiring attorney accepted non-legal full time employment and closed his/her law practice. The clients declined the inquiring attorney's offer to secure substitute counsel. The probate judge, who was aware that the attorney was closing his/her law office, would not permit substitution of counsel on a contested matter.

To date, the clients have either been unable or reluctant to secure substitute counsel. The inquiring attorney located proposed substitute counsel. However, the clients were unresponsive. The inquiring attorney informed the clients that he/she would withdraw if they did not contact the inquiring attorney within ten days. They failed to do so. The inquiring attorney asks if he/she may withdraw in light of the fact that the clients have failed to communicate with him/her and that he/she no longer has a functional law office.

Rule 1.17 entitled "Declining or Terminating Representation" sets forth provisions for mandatory and discretionary withdrawal. The inquiring attorney's primary reason for withdrawing is that he/she has accepted new employment and has ceased practicing law. Rule 1.7(b)(5) and (6) states that an attorney may withdraw from representing a client if the client is not adversely effected and "the representation will result in an unreasonable financial burden on the lawyer . . .; or (6) other good cause for withdrawal exists."

Rule 1.17(c) states that "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation." Despite the judge's comments, it appears from the facts provided that the inquiring attorney did not file a motion to withdraw with the court. Rule 1.17 sets forth arguments to support a motion to withdraw. Until the motion is granted, the attorney is under an obligation to continue the representation pursuant to Rule 1.17(c).